Seema Elizabeth Isoy v Tan Sri David Chiu Tat-Cheong

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 02(f)-54–09 OF 2023(W)
HASNAH ASHIM, HARMINDAR SINGH AND NORDIN HASSAN FCJJ
5 JUNE 2024

Tort — Defamation — Defamatory statements — Half-truth statement — Appellant posted text message in WhatsApp group that respondent had been convicted of fraud — Appellant omitted to state respondent's acquittal of charge — Whether impugned statement was half-truth statement that was defamatory of respondent — Whether foreign common law regarding half-truth statements was applicable pursuant to s 3(1) of Civil Law Act 1956 — Whether appellant's defences of qualified privileged and fair comment was defeated and defence of justification was sustainable

The appellant was a registered owner of a unit in Waldorf & Windsor Tower Serviced Apartments ('W&W') which was developed by Malaysia Land Properties Sdn Bhd ('Mayland'). She was also a committee or sub-committee member of the W&W Management Corp. The appellant together with 55 other persons were in the W&W WhatsApp group, consisting of unit owners or their representatives. The respondent was a businessman and the chairman and founder of Mayland. There were several legal disputes in court involving Mayland and W&W and in one of the cases, the High Court decided that Mayland had defrauded and/or made a false representation to W&W owners in respect of a common area in W&W. This decision was affirmed by the Court of Appeal and Mayland's application for leave to appeal against the decision of the Court of Appeal was not granted by the Federal Court. On 17 August 2017, the appellant sent a text message ('the impugned statement') to the W&W WhatsApp group which was said to mean, among others, that the respondent was a fraudster, dishonest, untrustworthy, and had been convicted of fraud. The respondent brought an action against the appellant for defamation where his pleaded case, in essence, was that the impugned statement in its ordinary and natural meanings was capable of being defamatory of the respondent and was a defamatory statement. In defence, the appellant stated that the impugned statement was not defamatory, and in the alternative, the statement was justified, made in good faith without malice, a fair comment, and a qualified privilege for the benefit of the participants in the WhatsApp group. The High Court dismissed the respondent's claim as it was found that the words referring to the respondent in the impugned statement were not defamatory and that the appellant had established the defences. However, the respondent succeeded in his appeal where the Court of Appeal

was of the view that the impugned statement was defamatory. The Court of Appeal found that the posting of the impugned statement was actuated with malice as although the appellant was fully aware of the fact the respondent was acquitted from the charge mentioned in the impugned statement long ago, but intentionally omitted to mention it in the statement. The appellant had posted a half-truth statement and requested the reader to Google for more information. Hence, this appeal.

Held:

(1) The charging of the respondent without stating that the respondent was acquitted was a half-truth statement that harmed the respondent. The statement was not substantially true and false in substance. The full truth of the respondent already been acquitted was deliberately not disclosed in the impugned statement and this placed a different complexion and effect on the statement. The message without the fact that the respondent had been acquitted, tainted the respondent's character and conduct and the respondent was held in ridicule, reprobation, and contempt. This established the defamatory effect of the impugned statement. The half-truth statement that presented a false impression, that discredited and dishonoured the respondent, certainly was capable of bearing a defamatory meaning. The impugned statement was defamatory of the respondent (see paras 37, 40 & 56–57).

(2) The issue of half-truth statements was not governed by written law, in particular the Defamation Act 1957 or the principle of law laid down by the courts. As such, the principles of English common law on the concept of half-truth statement were applicable in our defamation law pursuant to s 3(1) of the Civil Law Act 1956 (see paras 63 & 66).

(3) An action of deliberately publishing a half-truth statement that presented a false impression of a person which affected the person's reputation and further expected the reader of the impugned statement to do a further search on the information was a conduct actuated with malice. In the circumstances, the defence of qualified privilege and fair comment raised by the appellant was defeated and untenable. The appellant's defence of justification was also unsustainable as the impugned statement was not substantially true and presented a false impression in the readers' eyes. Further, it was established that the impugned statement had injured the respondent's reputation. As such, the defence under s 8 of the Defamation Act 1957 was inapplicable (see paras 74, 76–77 & 79).

(4) The appellant's appeal was without merit, and as such the decision of the Court of Appeal in setting aside the High Court decision was affirmed (see para 80).

[Bahasa Malaysia summary

Perayu merupakan pemilik berdaftar sebuah unit di Waldorf & Windsor Tower Serviced Apartments ('W&W') yang dibangunkan oleh Malaysia Land Properties Sdn Bhd ('Mayland'). Beliau juga merupakan ahli jawatankuasa atau ahli jawatankuasa kecil Perbadanan Pengurusan W&W. Perayu bersama 55 orang lain berada dalam kumpulan WhatsApp W&W, terdiri daripada pemilik unit atau wakil mereka. Responden adalah seorang ahli perniagaan dan pengerusi serta pengasas Mayland. Terdapat beberapa pertikaian undang-undang di mahkamah yang melibatkan Mayland dan W&W dan dalam salah satu kes, Mahkamah Tinggi memutuskan bahawa Mayland telah menipu dan/atau membuat representasi palsu kepada pemilik W&W berkenaan dengan kawasan bersama dalam W&W. Keputusan ini disahkan oleh Mahkamah Rayuan dan permohonan Mayland untuk kebenaran merayu terhadap keputusan Mahkamah Rayuan tidak diberikan oleh Mahkamah Persekutuan. Pada 17 Ogos 2017, perayu menghantar mesej teks ('kenyataan dipertikaikan') kepada kumpulan WhatsApp W&W yang dikatakan antara lain bermaksud bahawa responden adalah seorang penipu, tidak jujur, tidak amanah, dan telah disabitkan dengan penipuan. Responden membawa tindakan terhadap perayu kerana memfitnah di mana kes yang diplidkan, pada asasnya, adalah kenyataan dipertikaikan dalam makna biasa dan semula jadi mampu memfitnah responden dan merupakan kenyataan fitnah. Dalam pembelaan, perayu menyatakan bahawa kenyataan dipertikaikan tidak memfitnah, dan sebagai alternatif, kenyataan itu adalah wajar, dibuat dengan suci hati tanpa niat jahat, ulasan adil, dan perlindungan layak untuk manfaat peserta dalam kumpulan WhatsApp. Mahkamah Tinggi menolak dakwaan responden kerana didapati bahawa perkataan yang merujuk kepada responden dalam kenyataan dipertikaikan adalah tidak memfitnah dan perayu telah membuktikan pembelaan. Walau bagaimanapun, responden berjaya dalam rayuannya di mana Mahkamah Rayuan berpendapat bahawa kenyataan dipertikaikan adalah berunsur fitnah. Mahkamah Rayuan mendapati bahawa penyiaran kenyataan dipertikaikan digerakkan dengan niat jahat kerana walaupun perayu menyedari sepenuhnya fakta bahawa responden telah dibebaskan daripada pertuduhan yang disebut dalam kenyataan dipertikaikan dahulu, tetapi dengan sengaja tidak menyebutnya dalam kenyataan itu. Perayu telah menyiarkan kenyataan separuh benar dan meminta pembaca untuk melayari Google untuk mendapatkan maklumat lanjut. Oleh itu, rayuan ini.

Diputuskan:

(1) Pertuduhan terhadap responden tanpa menyatakan bahawa responden telah dibebaskan adalah kenyataan separuh benar yang memudaratkan responden. Kenyataan itu tidak sepenuhnya benar dan palsu pada asasnya. Kebenaran penuh responden yang telah pun dibebaskan dengan sengaja tidak didedahkan dalam kenyataan dipertikaikan dan ini meletakkan rupa dan kesan yang berbeza pada kenyataan itu. Mesej

tanpa fakta bahawa responden telah dibebaskan, mencemarkan watak dan kelakuan responden dan responden telah dicemuh, dicela dan dihina. Ini mewujudkan kesan fitnah daripada kenyataan dipertikaikan. Kenyataan separuh benar yang memberikan tanggapan palsu, yang memburukkan dan mencemarkan nama baik responden, sudah tentu mampu membawa maksud fitnah. Kenyataan dipertikaikan adalah memfitnah responden (lihat perenggan 37, 40 & 56–57).

(2) Isu kenyataan separuh benar tidak dikawal oleh undang-undang bertulis, khususnya Akta Fitnah 1957 atau prinsip undang-undang yang ditetapkan oleh mahkamah. Oleh itu, prinsip undang-undang am Inggeris mengenai konsep kenyataan separuh benar boleh digunakan dalam undang-undang fitnah di sini menurut s 3(1) Akta Undang-Undang Sivil 1956 (lihat perenggan 63 & 66).

(3) Tindakan sengaja menerbitkan kenyataan separuh benar yang memberikan tanggapan palsu tentang seseorang yang menjejaskan reputasi orang itu dan seterusnya menjangkakan pembaca kenyataan dipertikaikan untuk melakukan carian lanjut mengenai maklumat itu adalah kelakuan yang digerakkan dengan niat jahat. Dalam keadaan tersebut, pembelaan terhadap perlindungan layak dan ulasan adil yang dibangkitkan oleh perayu telah dikalahkan dan tidak boleh dipertahankan. Pembelaan justifikasi perayu juga tidak dapat dipertahankan kerana kenyataan dipertikaikan tidak sepenuhnya benar dan memberikan tanggapan palsu di mata pembaca. Selanjutnya, didapati bahawa kenyataan dipertikaikan telah memudaratkan reputasi responden. Oleh yang demikian, pembelaan di bawah s 8 Akta Fitnah 1957 adalah tidak terpakai (lihat perenggan 74, 76–77 & 79).

(4) Rayuan perayu adalah tanpa merit, dan oleh itu keputusan Mahkamah Rayuan mengetepikan keputusan Mahkamah Tinggi telah disahkan (lihat perenggan 80).]

Cases referred to

Cimolai v Hall [2005] BCJ No 81, SC (refd)

Chok Foo Choo @ Chok Kee Lian v The China Press Bhd [1999] 1 MLJ 371; [1999] 1 CLJ 461, CA (folld)

Chong Chieng Jen v Government of State of Sarawak & Anor [2019] 3 MLJ 300, FC (distd)

Chung Khiaw Bank Ltd v Hotel Rasa Sayang Sdn Bhd & Anor [1990] 1 MLJ 356; [1990] 1 CLJ 675, SC (refd)

Dato' Seri Mohammad Nizar bin Jamaluddin v Sistem Televisyen Malaysia Bhd & Anor [2014] MLJU 262; [2014] 5 CLJ 560, CA (refd)

Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Mohd Rafizi bin Ramli [2022] 3 MLJ 758; [2022] 5 CLJ 487, FC (refd)

Dato' Seri Anwar bin Ibrahim v The New Straits Times Press (M) Sdn Bhd &

Anor [2010] 2 MLJ 492, HC (refd)
Derbyshire County Council v Times Newspapers Ltd and others [1993] 1 All ER 1011, HL (refd)
JB Jeyaretnam v Goh Chok Tong [1985] 1 MLJ 334; [1984] 1 LNS 139 (refd)
Jones v Skelton [1963] 3 All ER 952, PC (refd)
Klentzman v Brady 456 SW 3d 239 (refd)
Lim Guan Eng v Ruslan bin Kassim and another appeal [2021] 2 MLJ 514, FC (refd)
Lim Guan Eng v Utusan Melayu (M) Bhd [2012] 2 MLJ 394, HC (refd)
MD Mineralsearch Inc v East Kootenay Newspapers Ltd [2002] BCJ No 111, CA (refd)
Maria Chin Abdullah v Ketua Pengarah Imigresen & Anor [2021] 1 MLJ 750, FC (refd)
Olive Hospitality Inc v Woo [2006] BCJ No 2739, SC (folld)
Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor v Muziadi bin Mukhtar [2020] 1 MLJ 141, FC (refd)
Public Services Commission Malaysia & Anor v Vickneswary a/p RM Santhivelu (substituting M Senthivelu a/l R Marimuthu, deceased) [2008] 6 MLJ 1, FC (refd)
Rajagopal v Rajan [1972] 1 MLJ 45, FC (refd)
Raphael Pura v Insas Bhd & Anor [2003] 1 MLJ 513, FC (refd)
S Pakianathan v Jenni Ibrahim [1988] 2 MLJ 173, SC (refd)
Sharifuddin Mohamed & Anor v Dato'Annas bin Khatib Jaafar [2016] MLJU 1729; [2016] 3 CLJ 574, CA (refd)
Soh Chun Seng v CTOS-EMR Sdn Bhd [2003] 4 MLJ 180, SC (refd)
Subashini Rajasingam v Saravanan Thangathoray (No 2) [2007] 4 MLJ 97, CA (refd)
Sutherland and others v Stopes [1925] AC 47, HL (refd)
Syarikat Bekalan Air Selangor Sdn Bhd v Tony Pua Kiam Wee [2015] 6 MLJ 187; [2015] 8 CLJ 477, FC (refd)
Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Berhad & Anor [1973] 2 MLJ 56 (refd)
Tan Sri Dato' Tan Kok Ping, JP lwn The New Straits Times Press (M) Bhd dan lain-lain dan satu lagi guaman [2010] 2 MLJ 694; [2010] 3 CLJ 614, HC (refd)
The Citizen 1978 (Pty) Ltd and Others v McBride [2011] 5 LRC 286 (refd)
Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors [1996] 1 MLJ 393, HC (refd)
V Radhakrishnan v Alla Rama Krishna Reddy 2018 SCC Hyd 98; 2018 Cri LJ 302, HC (refd)

Legislation referred to

Civil Law Act 1956 s 3, 3(1)
Defamation Act 1957 ss 8, 9
Government Proceedings Act 1956 s 3

Manmohan Singh Kang (with Aneera Joshini Chowdhury and Lu Yiing Suey) (AJ Chowdhury) for the appellant.
DP Naban (with Austen Pereira, Sivabalan a/l Karupiah and Goh Wan Ping) (Mastura Partnership) for the respondent.

Nordin Hassan FCJ (delivering judgment of the court):

INTRODUCTION

[1] This is another defamation suit brought by an aggrieved party for this court's determination. Tan Sri David Chiu Tat Cheong, the respondent before this court, was the plaintiff at the High Court and Seema Elizabeth Isoy, the appellant, was the defendant. After a full trial before the High Court, the plaintiff's claim was dismissed. However, the plaintiff succeeded in his appeal at the Court of Appeal where the decision of the High Court was set aside and the plaintiff's claim was allowed. The plaintiff was awarded damages of RM100,000. Hence, the present appeal.

[2] The appeal before us, essentially, centers on the effect of a half-truth statement in defamation law in Malaysia, particularly whether a half-truth statement constitutes a false statement. On 28 August 2023, upon the appellant's application for leave to appeal, this court granted the following questions:

Question 1:

Are Malaysian courts jurisdictionally competent to rely on foreign common law as far as it relates to the doctrine of 'half-truth' in deciding whether a statement is defamatory or otherwise when the provision of s 3 of the Civil Law Act 1956 prohibits this reliance in circumstances where local statutory provisions provide a remedy as decided in the case of *Chong Chieng Jen v Government of State of Sarawak & Anor* [2019] 3 MLJ 300?

Question 2:

If the first question is answered in the affirmative, would the provisions of:

(a) s 8 of the Defamation Act 1957 sufficiently provides a basis for the defence of justification in a situation where the impugned statement is 'substantially true'? and/or

(b) s 9 of the Defamation Act 1957 sufficiently provides a basis for the defence of fair comment in a situation where the impugned statement is based on true matters?

Question 3:

If the second question is answered in the affirmative:

(a) would a 'substantially true' statement mentioning criminal charges as having been instituted against a plaintiff in a defamation suit be protected by the provision of s 8 of the Defamation Act 1957 despite the absence of a mention that the plaintiff was eventually acquitted of those charges? and/or

(b) would a true statement mentioning criminal charges as having been instituted against a plaintiff in a defamation suit be protected by the provision of s 9 of the Defamation Act 1957 despite the absence of a mention that the plaintiff was eventually acquitted of those charges?

Question 4:

Whether the doctrine of 'half-truth' applicable in the threshold test for defamation which the two-step process is affirmed by the Federal Court in *Chong Chieng Jen v Government of State of Sarawak & Anor* [2019] 3 MLJ 300?

THE BACKGROUND FACTS

[3] Seema Elizabeth Isoy, the appellant, is the registered owner of a unit in Waldorf & Windsor Tower Serviced Apartments (W&W) which was developed by Malaysia Land Properties Sdn Bhd ('Mayland'). She was also a committee or sub-committee member of the W&W Management Corp ('MC'). The appellant together with 55 other persons were in the W&W Whatsapp Group, consisting of unit owners or their representatives.

[4] Tan Sri David Chiu Tat-Cheong, the respondent, is a businessman and the Chairman and founder of Mayland.

[5] There were several legal disputes in court involving Mayland and W&W and in one of the cases, the High Court decided that Mayland had defrauded and/or made a false representation to W&W owners in respect of a common area in W&W. This decision was affirmed by the Court of Appeal and Mayland application for leave to appeal against the decision of the Court of Appeal was not granted by the Federal Court.

[6] On 17 August 2017, the appellant sent a text message ('impugned statement') to the W&W Whatsapp Group which reads:

> *In order for owners to know all the facts, I believe we have to step back even more and ask 'who is Mayland?'*
>
> *Mayland is the CHIU family.*
>
> So who is this Chiu family?
>
> Let's have a very brief look at the publicly known facts about his family:

– The Chiu family is an extremely rich and successful family originating from China, then based in Hong Kong. Now with business in many countries, including Malaysia.

I'm always happy for people's happiness and good fortune but ...

Deacon Chiu (Sr.) has been in the past arrested and charged with conspiracy to falsify documents of the Far East Bank, where they were the major shareholders. For plotting to defraud the Commissioner of Banking by making false claims concerning the ownership of companies to which the bank had made advances of $ 352.5 million.

– Duncan Chiu (Deacon SR's son) has in the past been arrested for allegedly breaching the Theft Ordinance and the Companies Ordinance.

– David Chiu (Deacon Sr's son) has been in the past arrested and charged for the same offenses as Deacon Sr. He also faced charges of conspiring to falsify documents purporting to show that more than $ 246 million in credit facilities had been granted to the bank by various companies.

And now the climax to this family saga:

– The same don (David Chiu) is the founder and Chairman of Mayland !!!

Mayland has been convicted of Fraud and Misrepresentation against W&W owners:

At High Court level

At Court of Appeal level

At Federal Court level

The apple doesn't fall far from the tree ...

Please google these names to read more.

'the same son' (Emphasis added.)

[7] Dissatisfied with the impugned statement, the respondent brought an action to the court against the appellant for defamation. The respondent's pleaded case as reflected particularly, in paras 13, 14, and 15 of the amended statement of claim, in essence, that the impugned message in its ordinary and natural meanings was capable of being defamatory of the respondent and is a defamatory statement. The impugned statement was said to mean, among others, that the respondent is a fraudster, dishonest, untrustworthy, and has been convicted of fraud.

[8] The respondent further claimed that the defamatory statements tended to excite against the respondent, the adverse opinion of members of others, and tended to lower the respondent in the estimation of the right-thinking members of the society.

[9] The reliefs sought by the respondent, inter alia' for special damages of RM1.5m or damages to be assessed by the Registrar, general damages, and aggravated damages.

[10] Conversely, the appellant's defence as stated at para 8 of the amended statement of defence, was that the impugned statement was not defamatory, and in the alternative, the statement was justified, made in good faith without malice, a fair comment, and a qualified privilege for the benefit of the participants in the Whatsapp Group.

[11] On 27 August 2017, the administrator of W&W Whatsapp Group removed the appellant from the Whatsapp Group for knowingly posting false and misleading information in the group and refused to take responsibility when questioned.

THE HIGH COURT PROCEEDINGS

[12] After a full trial, the judicial commissioner ('JC') dismissed the respondent's claim as it was the court's finding that the words referring to the respondent in the impugned statement were not defamatory. In addition, the JC found that the appellant had established the defence of justification as the impugned statement was substantially true. This finding is based on the fact that Mayland had been found guilty by the court of fraud and misrepresentation in obtaining a title in W&W and it is also a fact that the respondent had, in the past, been arrested and charged for conspiring to falsify documents, the same offence faced by the respondent's father, Deacon Sr.

[13] The JC also held that the appellant had established the defence of qualified privilege because, inter alia, the impugned statement was communication between fellow owners or residents of W&W in the Whatsapp Group without indirect or wrong motive. Therefore, the circumstances and the occasion relating to the impugned statement are a privileged occasion.

[14] Further, it was the finding of the JC that the appellant had discharged her burden of proving the defence of fair comment. Firstly, the impugned message is a matter of public interest. It concerns Mayland of which the respondent is the Chairman and founder and there exists legal disputes between Mayland and W&W. Secondly, the impugned message is based on true facts, and read as a whole the message is a fair expression of opinion. Lastly, the impugned message is such that a fair-minded person can honestly make it. It was stated in a matter-of-factly manner, straightforward and unemotional, and does not exceed the bounds of fair comment and just criticism.

[15] Finally, the JC held that there was no malice on the part of the appellant in sending the impugned statement which would defeat her defence of a qualified privilege and fair comment. The appellant had an honest belief in the truth of the impugned statement and nothing in the statement indicates that the respondent was a target of an improper motive.

THE COURT OF APPEAL PROCEEDINGS

[16] At the Court of Appeal, having considered the submissions of the parties, it was held that there are merits in the appeal. The Court of Appeal was of the view that the impugned statement was defamatory. The words in the statement conveyed to the ordinary man that the respondent is dishonest and a fraudster. The statement read as a whole, in its natural and ordinary meaning had the tendency to disparage and injure the respondent's standing, character, and reputation. The statement also tended to excite the adverse opinion of those within the Whatsapp Group against the respondent. As such, the appeal by the respondent was allowed. The respondent was awarded RM100,000 as damages and also a permanent injunction was granted to restrain the appellant from publishing or spreading the impugned statement or similar defamatory words concerning the respondent.

[17] On the issue of malice, the Court of Appeal found that the posting of the impugned statement was actuated with malice. The reason is that, although the appellant was fully aware of the fact the respondent was acquitted from the said charge mentioned in the impugned statement long ago, but intentionally omitted to mention it in the statement. The appellant had posted a half-truth statement and requested the reader to google for more information. The non-disclosure was deliberate and unfair to the respondent. As malice had been established, the court held that the appellant's defence of qualified privilege and fair comment was unsustainable.

THE APPEAL

Submission by the appellant

[18] In essence, counsel for the appellant submitted that the concept or doctrine of half-truth applied by the Court of Appeal in the present case is against the principles of defamation and placed the law of defamation in a state of flux. This concept would be contrary to the principles of the two-step process which was affirmed by this court in *Chong Chieng Jen v Government of State of Sarawak & Anor* [2019] 3 MLJ 300. The trite principle of defamation law is that the court's first task is to determine whether the words complained of are capable of bearing a defamatory meaning, which is a question of law, and the next task is to ascertain whether the words are in fact defamatory which is a question of facts. Therefore, the court is only to look at the words themselves

when determining whether a statement is prima facie defamatory and examine the words in their common, natural, or contextual meaning. A

[19] It was further contended that the concept of half-truth would entail factual consideration of truth or falsity being conjoined into the threshold test, where consideration only belong to the defences of justification and fair comment. This also means that consideration of what the maker of the statement knew at the time of making the statement are being conjoined into the threshold test when such consideration traditionally only belong when considering malice. In addition, it was submitted that the concept of half-truth reversed the traditional standard of an ordinary reader being reasonable, not unduly suspicious, and not avid for scandal. B C

[20] Further, it was the appellant's submission that the Court of Appeal had misinterpreted and misapplied the foreign common law in the South Africa case of *The Citizen 1978 (Pty) Ltd and Others v McBride* [2011] 5 LRC 286, the British Colombia case of *MD Mineralsearch Inc v East Kootenay Newspapers Ltd* [2002] BCJ No 111 and *Cimolai v Hall* [2005] BCJ No 81 and the Indian High Court case of *V Radhakrishnan v Alla Rama Krishna Reddy* 2018 SCC Hyd 98; 2018 Cri LJ 302. It was contended that these cases do not contribute to the new doctrine of half-truth as among others, those cases do not define what a half-truth statement is, how the half-truth statement applies at the threshold level, and the defence level, and do not show how to reconcile the same with the notion of a reasonable reader not unduly suspicious or avid for scandal. D E F

[21] Counsel for the appellant further contended that the decision of the Court of Appeal had created duality in the approach to defamation allegation at the threshold level. The Court of Appeal's approach contradicts judicial precedent in Malaysia which ruled that allegations of charges, arrest, and commissions of crimes are not prima facie defamatory at the threshold level. The cases of *Sharifuddin Mohamed & Anor v Dato'Annas bin Khatib Jaafar* [2016] MLJU 1729; [2016] 3 CLJ 574 (CA), *Tan Sri Dato' Tan Kok Ping, JP lwn The New Straits Times Press (M) Bhd dan lain-lain dan satu lagi guaman* [2010] 2 MLJ 694; [2010] 3 CLJ 614 (HC) and *Dato' Seri Anwar bin Ibrahim v The New Straits Times Press (M) Sdn Bhd & Anor* [2010] 2 MLJ 492 (HC) amongst the cases cited to support the contention. G H

[22] In addition, it was submitted that the concept of a half-truth statement is ambiguous, uncertain, and undefined in Malaysia. Hence, the concept should not be applicable at the threshold level or the defence level but only if to establish malice which the respondent failed to prove. This concept would also create legal absurdities as the appellant was found liable for defamation based on the statement that she did not make. I

A **[23]** Next, counsel for the appellant submitted that the Court of Appeal was not competent to rely on foreign common law in light of the statutory provisions in particular ss 8 and 9 of the Defamation Act 1957, the established principles of defamation law in Malaysia, and the application of s 3(1) of the Civil Law Act 1956.

B

The submission by the respondent

[24] On the other hand, counsel for the respondent submitted that the impugned statement was defamatory of the respondent and the defence of C justification and fair comment is not applicable in the present case.

[25] Firstly, it was contended that the common law of England applies concerning the issue of the doctrine of half-truth as the Defamation Act 1957 D is not comprehensive legislation and does not address the issue at hand. Section 3(1) of the Civil Law Act 1956 allows such application where local circumstances render necessary and the provision does not prohibit the application of foreign common law under the circumstances. The cases of *Chung Khiaw Bank Ltd v Hotel Rasa Sayang Sdn Bhd & Anor* [1990] 1 MLJ 356; [1990] 1 CLJ 675 (SC), *Lim Guan Eng v Ruslan bin Kassim and another* E *appeal* [2021] 2 MLJ 514 (FC), *Maria Chin Abdullah v Ketua Pengarah Imigresen & Anor* [2021] 1 MLJ 750 (FC) and *Subashini Rajasingam v Saravanan Thangathoray (No 2)* [2007] 4 MLJ 97 (FC) were among the cases quoted in support of the contention.

F

[26] Further, counsel for the respondent submitted that the test in determining the ordinary and natural meaning of the impugned message is an objective test. Not only that reference is to be made to its literal meaning but it also includes the implied, inferred, or indirect meaning of the impugned G statement. In the present case, the message that mentioned the charges of fraud against the respondent and his family long ago and deliberately omitted to state that the respondent was acquitted of the charges and equated Mayland which had been found liable for fraud with the respondent, was defamatory of the H respondent. In its natural and ordinary meaning, the impugned statement meant or is understood to mean that the respondent is a fraudster, dishonest, untrustworthy, and convicted of fraud by the courts.

[27] Counsel for the respondent argued that the truth of a statement must be I presented with its entire context and failure to do so renders the impugned statements unjustified, regardless of their nature, and not substantially true. These 'half-truth' statements are in fact a 'whole lie' capable of defamatory meaning and are defamatory of the respondent.

[28] Next, it was submitted that since the impugned statement is untrue or not substantially true, the defence of justification is not available for the appellant. Thus, the appellant's reliance on s 8 of the Defamation Act 1957 is misplaced.

[29] As to the defence of fair comment, counsel for the respondent contended that the impugned message substantially consists of assertions of facts and does not attract the defence of fair comment. In addition, the appellant in her pleading, pleads fair comment and not fair comment on a matter of public interest. As such, the elements to constitute a defence of fair comment have not been established by the appellant. In any event, the impugned message is only an assertion of half-true facts and not a comment which may attract the defence of fair comment. Further, the impugned message was made with malice and demolished the defence of fair comment or even qualified privilege. Thus s 9 of the Defamation Act also does not apply in the present case.

ANALYSIS AND DECISION OF THIS COURT

[30] Before we proceed to address the main issue of the concept of half-truth in the present case, it is instructive to recapitulate the trite principles of defamation law in Malaysia. To begin with, in a defamation suit, the elements to be established on the balance of probabilities by the plaintiff are the defamatory words, the words refer to the plaintiff, and the words were published.

[31] The test in determining whether the words are defamatory is also well-settled in that, those words in their natural and ordinary meaning, tend to lower the plaintiff in the estimation of a reasonable man in society. The words impute the plaintiff's dishonorable conduct or lack of integrity and expose the plaintiff to hatred, contempt, or ridicule. It tends to excite against the plaintiff the adverse opinion of others (see *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Berhad & Anor* [1973] 2 MLJ 56; *Chok Foo Choo @ Chok Kee Lian v The China Press Bhd* [1999] 1 MLJ 371; [1999] 1 CLJ 461; *Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393; and *JB Jeyaretnam v Goh Chok Tong* [1985] 1 MLJ 334; [1984] 1 LNS 139).

[32] It is pertinent to reiterate here that the tendency of the impugned words may also amount to a defamatory nature even if the words did not lower the plaintiff in the estimation of society (see *Tun Datuk Patinggi*; *JB Jayaretnam*; and *Syed Husin Ali*).

[33] Further, the ordinary and natural meaning of the words must be considered in the context of the whole text or message, in its entirety and not

in isolation. In determining the ordinary and natural meaning of the words, the court may consider their literal meaning or their implied, inferred innuendo, or indirect meaning. In addition, the ordinary and natural meaning of the words also include implications or inferences that can be drawn from the words. Lord Morris in *Jones v Skelton* [1963] 3 All ER 952 quoted with approval in *Chok Foo Choo*, said this:

> *The ordinary and natural meaning of the words may be either the literal meaning or it may be an implied or inferred or an indirect meaning:* any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words (see *Lewis v Daily Telegraph Ltd* [1963] 2 All ER 151). *The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader, guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction, would draw from the words*. The test of reasonableness guides and directs the court in its function of deciding whether it is open to a jury in a particular case to hold that reasonable persons would understand the cords complained of in a defamatory sense. (Emphasis added.)

The 'half-truth' statement

[34] In the present case, the respondent complained that the appellant's impugned statement was not the whole truth of the material facts. It was not disputed that the respondent was charged with a fraudulent act but he was acquitted of the said charge and this took place about two decades ago. Although the charge against the respondent mentioned in the impugned statement was true, the evidence was also established that when the appellant published the impugned statement in the Whatsapp Group, it was within the knowledge of the appellant that the respondent was acquitted of the charge. However, the appellant omitted to state this material fact.

[35] The appellant's knowledge of the respondent's acquittal was in the appellant's testimony as reflected in the notes of proceedings as follows:

> GSR: I want you to look at that article. It says, 'About five years', I'm reading from the fourth paragraph. About five years ago, Deacon Chiu and his son, David, were charged with conspiracy to falsify documents of the Far East Bank where they were the major shareholders. In April last year, the High Court ruled that the Senior Chiu would not be given a fair trial because he was suffering from serious deterioration of his intellectual and memory functions. A month later, *David Chiu was acquitted of the fraud charges.* After his acquittal, he resolved to rebuild the fortunes of the Far East Consortium. Now you said that you are being fair to David Chiu in your witness statement because you said, there was nothing wrong in what you wrote.
>
> SEEMA: There's nothing wrong in what I wrote. Correct.
>
> ...
>
> GSR: But it was not true

SEEMA: Everything I wrote was true

GSR: You did not include in your post the fact, do you confirm that *you did not include in your post that David Chiu had been acquitted*?

SEEMA: *I agree*

GSR: Yes

SEEMA: *But I did not say he was found guilty either.*

GSR: No, no. He, *you did not say that he was acquitted.* That's all. Answer the question

SEEMA: *Yes, I agree*

GSR: So, do you agree with me that if you had included that, that would have been a fairer statement to him?

SEEMA: I disagree. Because *I said google this to read more.* (Emphasis added.)

[36] The reason for not including the respondent's acquittal in the impugned statement as revealed in the appellant's testimony was that the appellant had already asked the readers to google for more information. In addition, the appellant did not say that the respondent was convicted of the charge.

[37] Having perused the impugned statement in totality, the sting effect, was that, the respondent was charged with the fraudulent act same as his father, Deacon Sr. The imputation to the readers was that the respondent was not a person of good character and tended to excite against the plaintiff the adverse opinion of others. If the fact the respondent was acquitted of the charge mentioned by the appellant in the impugned message, which in the appellant's knowledge, it certainly would have neutralised the sting in the eyes of the readers. The defence that the reader to google for more information on the matter could not neutralise the defamatory nature of the impugned statement. The charging of the respondent without stating that the respondent was acquitted, in the circumstances, is a half-truth statement that harms the respondent. The statement made is not substantially true and false in substance. This is prejudicial and unfair to the respondent as he was unable to justify the criminal act imputed by the impugned statement.

[38] The House of Lords in *Sutherland and others v Stopes* [1925] AC 47 dealt with the issue of the half-truth statement at pp 73 and 74, where Bankes LJ explained:

> When facts are stated they can be justified as being, although defamatory and of and concerning the plaintiff, yet true; when opinions are stated they can be justified on precisely the same grounds — namely, that although of and concerning the plaintiff and defamatory, yet they also are true. In the next place, when in the course of the statement of defamatory matter both facts and opinions are set forth, it is upon

similar principles open to a defendant to say that the entirety, both fact and opinion, is true in substance and in fact. That was the present case. It was so pleaded and the trial was conducted by both parties upon that comprehensive defence. In every one of these cases, if the truth of the libel is affirmed by the jury the case is at an end. There is no room for introducing fair comment or of perplexing the jury with the consideration of such a plea, when the defendant has justified the truth of all he has said, whether in stating fact or expressing opinion.

There are two qualifications which must be made upon this absolute rule. *In the first place, truth must not be stated without being fully stated that is to say, without that context in the case of a libel, and without those circumstances in the case of a slander, which would put a different complexion upon matter which is libellous or slanderous standing by itself, and would possibly or probably destroy altogether its character as such.*

In the second place, *a statement of fact* or of opinion which consists in the raking up of a long-buried past may, without an explanation (and, in cases which are conceivable, even with an explanation), *be libellous or slanderous if written or uttered in such circumstances as to suggest that a taint upon character and conduct still subsists, and that the plaintiff is accordingly held up to ridicule, reprobation, and contempt.*

Subject to these qualifications, the rule as to justification, in fact, being exclusive, as a plea, of a plea of fair comment, in the sense of making the latter unnecessary, is, in my opinion, an absolute rule. (Emphasis added.)

[39] Further, Bankes LJ in the same case, at p 79, emphasised as follows:

In the second place, however, *the allegation of fact must tell the whole story.* If for instance, in the illustration given, the facts as elicited show what my writing had not disclosed — namely, that the defendant had a saddle of his own lying in the harness room, and that he took by mistake mine away instead of his own and, still laboring under that mistake, sold it — then *the jury would properly declare that the libel was not justified on the double ground that there were facts completely explaining in a non-criminal sense anything that was done, and the jury would disaffirm the truth of the libel because, although meticulously true in fact, it was false in substance.*

[40] Likewise in the present case, the full truth of the respondent already been acquitted was deliberately not disclosed in the impugned statement and this placed a different complexion and effect on the statement. The message without the fact that the respondent had been acquitted, tainted the respondent's character and conduct and the respondent was held in ridicule, reprobation, and contempt. This established the defamatory effect of the impugned statement. Although the charge against the respondent was true, the omission to reveal that the respondent was acquitted of the charge, makes the statement false in substance.

[41] The facts in the present case have similarities with a Court of Appeal of Texas case in *Klentzman v Brady* 456 SW 3d 239, 268 (Tex App 2014). In that case, Klentzman, a reporter for *The Star* was sued by Wade Brady for defamation arising from an article he published concerning Wade Brady. In the

article, it states among other things, that Wade Brady was charged with being a minor in possession of alcohol ('MIP'). Klentzman omitted to mention in the article the fact that Wade Brady was acquitted of the said charge. Thus, the court ruled that the statement Wade Brady was charged and omitted to state that he was acquitted of the charge had brought a defamatory impression. The court explained as follows:

> Here, *the Article failed to state at any point that Wade had been acquitted* by a jury on the MIP charge. *The failure to report that Wade was acquitted, leaving the impression that he was guilty of the MIP charge, was clearly more damaging to his reputation in the mind of the average reader than the truth would have been.* (Emphasis added.)

[42] The same position was taken by Ngcobo CJ in *The Citizen 1978 (Pty) Ltd and Others v McBride* [2011] 5 LRC 286 where in his dissenting judgment he said this:

> As the facts upon which a fair comment is based must be true, the defence in relation to this statement must fail. I agree. The statement was simply false. However, I am unable to agree with his conclusion in relation to the statement that McBride had a dubious flirtation with alleged gun dealers in Mozambique. *This statement is based on a half-truth and is, therefore, also untrue.*
>
> *None of the articles that appeared in The Citizen mentioned this fact, in particular, the explanation that the charges were quashed by the Supreme Court of Mozambique. Reference to the quashing of the charges was vital as it would have enabled the reader to understand why McBride was released. The omission of this information, in my view, resulted in the facts relating to the arrest and release of Mr McBride in Mozambique to be a half-truth. The facts relating to McBride were therefore not accurately stated.* (Emphasis added.)

[43] Similarly in the present case, the omission to state in the impugned statement the vital information that the respondent was acquitted of the charge against him is a half-truth statement and resulted in the defamatory impression that he was guilty of the charge in the eyes of the readers.

[44] Next, the British Columbia Supreme Court in *Olive Hospitality Inc v Woo* [2006] BCJ No 2739 explained the same issue in the following words:

> 164 The allegations that I have found to be true are true only because of Mr Woo's conduct in making them so. This brings into play the principle that proof that statements are literally true will not be sufficient justification if the words reasonably convey an overall impression that is false. For example, if facts have been omitted, which, if reported, would create an entirely different impression from the facts reported taken alone, the statement may be defamatory: *MD Mineralsearch Inc v East Kootenay Newspapers Ltd* [2002] 97 BCLR (3d) 291, 2002 BCCA 42. In *Cimolai v Hall* [2005] BCJ No 81; 2005 BCSC 31 at para 173, Madam Justice Holmes stated the proposition as follows:
>
> *If the overall impression of the publication is false, the defence fails even if some or*

> *even all of the literal words are proven to be true. Half-truths can be just as damaging as outright falsehoods, and their effect may be even more severe because they can be more difficult to explain …* (Emphasis added.)

[45] The issue of false impressions which amounts to defamatory was also elaborated on *MD Mineralsearch Inc* case. In that case, the article reported that Mineralsearch was convicted of a deceptive act or practice under the Trade Practices Act and was fined $200 by omitting to state that the judge ruled that it was a minor error by Mineralsearch, and as such sentence of only $200 was imposed. Thus, it was decided by the court that the article presented a false impression of Mineralsearch, and was unfair and defamatory.

[46] Levine JA in that case addressed the issue as follows:

> 20 The first question is *whether the article was defamatory. The trial judge found that the article created a false impression of the respondent that was potentially damaging to its reputation.* That finding accords with the definition of 'defamatory' found in Linden, Canadian Tort Law, 6th ed (Toronto); Butterworths, 1997) at p 677, quoting the American Restatement (Second) of Torts, s 559 (1965):
>
> > *A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third person from associating or dealing with him.*
>
> 21 *In my opinion, the fact that the respondent was convicted of a 'deceptive act or practice'(described in the article as a 'deceptive business practice') would lead an ordinary reader to conclude that the respondent had done something wrong in a deceptive manner*. I disagree with the appellant that only a person trained in the law would conclude that the respondent had a deceptive intent. The ordinary meaning of the word 'deceptive' is clear. Nor would an ordinary reader reasonably conclude from the fact that the fine was only $200 that the respondent had done nothing seriously wrong.
>
> 22. In my view, the trial judge applied the proper test and *there is no basis to challenge his finding that the article was defamatory.* (Emphasis added.)

[47] Thus, a half-truth statement that presents a false impression and that harms the reputation of a person is no doubt, defamatory. This kind of statement can safely be considered false in the circumstances. In *V Radhakrishnan v Alla Rama Krishna Reddy* 2018 SCC Hyd 98; 2018 Cri LJ 302, the court opined that a half-truth statement can be more dangerous than a total lie. In the case of *Lim Guan Eng v Utusan Melayu (M) Bhd* [2012] 2 MLJ 394, it was held by the court that half-truths statement are no truth at all and bear the intention to deliberately mislead and malign unfairly the party referred to in the statement.

[48] Reverting to the present case, the half-truth statement by the appellant, as discussed earlier, is not substantially true, presenting a false impression that can be considered as a false statement viewed in totality, that adversely affects

the respondent's reputation. In the circumstances, we agree with the Court of Appeal in the present case that the impugned statement is defamatory of the respondent.

[49] In coming to this conclusion, we need to emphasise here that we are not parting from the settled principles of defamation law in Malaysia and relying on the foreign common law on the concept of a half-truth statement. It is only an application of the facts to the law applicable in Malaysia. To begin with, Malaysian cases, as alluded to earlier, similar to other jurisdictions, had laid down the three elements to establish a defamation claim which are the words are defamatory, the words refer to the plaintiff, and the words were published. The application of the concept of a half-truth statement as elaborated above, does not entail a duality approach in defamation law in Malaysia as contended by counsel for the appellant.

[50] In the present case, it was not disputed that the impugned words that were published in the WhatsApp Group referred to the respondent. The only element left to be proven is whether those words were defamatory and defamatory words in their natural and ordinary meaning impute the plaintiff's dishonorable conduct or lack of integrity and expose the plaintiff to hatred, contempt, or ridicule which tends to excite adverse opinion of others against the respondent. In addition, the ordinary and natural meaning of the words have to be considered in the context of the whole text or message, in its entirety. The court may consider their literal meaning or their implied, inferred, innuendo, or indirect meaning and include implications or inferences that can be drawn from the words.

[51] Here, the half-truth statement is an important factor to be considered to determine whether the element of the defamatory words has been established on the balance of probabilities, and in the present case, as discussed earlier and applying the principles of law alluded to above, the impugned statement by the appellant is defamatory of the respondent.

[52] The decision of this court in *Chong Chieng Jen v Government of State of Sarawak & Anor* [2019] 3 MLJ 300 cited by the appellant's counsel, does not prohibit the half-truth statement to be considered in determining the defamatory nature of an impugned statement. In that case, the court re-affirmed the two steps of inquiries in an action for defamation which are, firstly, whether the impugned statement is capable of bearing a defamatory meaning which is a question of law, and secondly, whether the impugned statement is in fact defamatory, which is a question of fact.

[53] Ahmad Maarop PCA, in *Chong Chieng Jen*'s case, quoted with approval the Court of Appeal case of *Chok Foo Choo @ Chok Kee Lian v The China Press*

Bhd [1999] 1 MLJ 371; [1999] 1 CLJ 461 and states as follows:

> [62] In an action for defamation, *the first task of the court is to determine whether the words complained of are capable of bearing a defamatory meaning. This is a question of law which turns upon the construction of the words published. The next task of the court is to ascertain whether the words complained of are in fact defamatory. This is a question of fact which depends upon the circumstances of the particular case.* The steps of the inquiry before the court in an action for defamation was succinctly explained by Gopal Sri Ram JCA (later FCJ) in *Chok Foo Choo @ Chok Kee Lian v The China Press Bhd* [1999] 1 MLJ 371 (CA), at pp 374–375:
>
> > It cannot, I think, be doubted that *the first task of a court in an action for defamation is to determine whether the words complained of are capable of bearing a defamatory meaning.* And it is beyond argument that this is in essence a question of law that turns upon the construction of the words published. As Lord Morris put it in *Jones v Skelton* [1963] 3 All ER 952 at p 958:
> >
> > > *The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning*: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words (see *Lewis v Daily Telegraph Ltd* [1963] 2 All ER 151). *The ordinary and natural meaning may therefore include any implication or inference* which a reasonable reader, guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction, would draw from the words. The test of reasonableness guides and directs the court in its function of deciding whether it is open to a jury in any particular case to hold that reasonable persons would understand the words complained of in a defamatory sense.
> >
> > In my judgment, *the test which is to be applied lies in the question: do the words published in their natural and ordinary meaning impute to the plaintiff any dishonourable or discreditable conduct or motives or a lack of integrity on his part? If the question invites an affirmative response, then the words complained of are defamatory* (see *JB Jeyaretnam v Goh Chok Tong* [1985] 1 MLJ 334). Richard Malanjum J, in an admirable judgment in *Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393, collected and reviewed the relevant authorities upon this branch of the subject and I would, with respect, expressly approve the approach adopted by him.
> >
> > The article in the present instance when read as a whole clearly suggests that the appellant is a person who, under the guise of doing service, was in fact making false statements in order to deceive the people of Lukut. The implication is that the appellant is a man given to deception and is untrustworthy. I think that there can be no doubt that to say of a man that he is a cheat and a liar is a serious defamation of him. It has the effect of lowering the appellant in the estimation of right-thinking members of society generally. It follows that the learned judge in the present case

clearly fell into error when he held that the words complained of were not defamatory of the appellant.

Having decided whether the words complained of are capable of bearing a defamatory meaning, the next step in the inquiry is for a court to ascertain whether the words complained of are in fact defamatory. This is a question of fact dependent upon the circumstances of the particular case. In England, libel actions are tried by judge and jury, and the question is left for the jury to determine. However, *in this country, libel actions are tried by a judge alone, he is the sole arbiter of questions of law as well as questions of fact.* He must, therefore, make the determination. In the present instance, it is quite apparent that it is as a matter of pure fact that the article defames the appellant. It literally calls him a cheat and a liar. There can, in my opinion, be no dispute that the appellant was in fact libelled. I am, therefore, unable to agree with the opposite conclusion arrived at by the learned judge who tried the action. (Emphasis added.)

[54] The first task in determining an action for defamation is whether the impugned statement is capable of being defamatory. This involves the assessment of the words and construction of the impugned statement in its entirety and as to its ordinary and natural meaning either directly, indirectly, by implication, or inference.

[55] The test in ascertaining the defamatory nature of the impugned words as explained in *Chok Foo Choo*'s case and endorsed by this court in *Chong Chieng Jen*'s case, as alluded to above, is as follows:

> Do the words published in their natural and ordinary meaning impute to the plaintiff any dishonourable or discreditable conduct or motives or a lack of integrity on his part? If the question invites an affirmative response, *then the words complained of are defamatory.* (Emphasis added.)

[56] Applying the said test in the present case, as discussed earlier, the answer is in the affirmative. The half-truth statement that presented a false impression, that discredited and dishonoured the respondent, certainly is capable of bearing a defamatory meaning.

[57] The next step is whether the impugned statement posted in the WhatsApp Group by the appellant is in fact defamatory. On the assessment of facts in the present case, in totality, we agree with the Court of Appeal that the impugned statement is in fact defamatory of the respondent.

[58] What we wish to emphasise here is that the application of the concept of a half-truth statement in determining the defamatory nature of a statement is consistent with the applicable law in Malaysia including this court's decision in *Chong Chieng Jen*'s case. The foreign common law cited above besides being

persuasive authority, the common law of England is part of our law under s 3(1) of the Civil Law Act 1956. Further, in Malaysia, the task of determining the defamatory nature of a statement, which involves the question of law and fact, is shouldered by a judge alone, unlike in England, where the question of law is determined by the judge and the question of fact by the jury. Thus, there will be a rare occasion of any conflation of issues regarding the two steps or tasks required in determining an action for defamation as explained in the authorities cited above. In any event, the paramount consideration is whether the impugned statement is defamatory, besides it referred to the plaintiff and was published.

[59] The cases cited by the appellant's counsel in support of the contention that the impugned statement, in particular, that the respondent was charged with a fraudulent act is the truth and not defamatory of the respondent are distinguishable. All the cases referred to, do not involve a half-truth statement as in the present case. As such, the cases are of no assistance to the appellant's appeal.

The application of s 3(1) of the Civil Law Act 1956

[60] On this issue, counsel for the appellant submitted that the Court of Appeal was not competent to rely on foreign common law regarding the concept of a half-truth statement in light of s 3(1) of the Civil Law Act 1956 and the decision of this court in *Chong Chieng Jen*'s case.

[61] Section 3(1) of the Civil Law Act 1956 states:

> 3(1) *Save so far as other provision has been made or may hereafter be made by any written law in force in Malaysia*, the Court shall —
>
> (a) *in Peninsular Malaysia or any part thereof, apply the common law of England and the rules of equity as administered in England on 7 April 1956*;
>
> (b) in Sabah, apply the common law of England and the rules of equity, together with statutes of general application, as administered or in force in England on 1 December 1951;
>
> (c) in Sarawak, apply the common law of England and the rules of equity, together with statutes of general application, as administered or in force in England on 12 December 1949, subject however to subparagraph (3)(ii):
>
> *Provided* always that the said *common law, rules of equity, and statutes of general application shall be applied so far only as the circumstances of the States of Malaysia and their respective inhabitants permit and subject to such qualifications as local circumstances render necessary.* (Emphasis added.)

[62] The reading of s 3(1) above and the decisions of the apex court, it is settled law that the common law of England is applicable if there is no specific written law or principle of law in Malaysia governing or dealing with the issue raised (see *Chong Chieng Jen*'s case, *Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor v Muziadi bin Mukhtar* [2020] 1 MLJ 141 (FC), *Public Services Commission Malaysia & Anor v Vickneswary a/p RM Santhivelu (substituting M Senthivelu a/l R Marimuthu, deceased)* [2008] 6 MLJ 1 (FC), *Raphael Pura v Insas Bhd & Anor* [2003] 1 MLJ 513 (FC), and *Chung Khiaw Bank Ltd v Hotel Rasa Sayang Sdn Bhd & Anor* [1990] 1 MLJ 356; [1990] 1 CLJ 675 (SC)).

[63] In the present case, the issue of half-truth statements was not governed by our written law, in particular the Defamation Act 1957 or the principle of law laid down by our courts. In this regard, counsel for the appellant argued that ss 8 and 9 of the Defamation Act 1957 cater to the issue of half-truth statements. Section 8 provides the defence of justification whilst s 9 lays down the defence of fair comment. The provisions are as follows:

> 8 Justification
>
> *In an action for libel* or slander in respect of words containing two or more distinct charges against the plaintiff, *a defence of justification shall not fail by reason only that the truth of every charge is not proved* if the words not proved to be true *do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.*
>
> 9 Fair comment
>
> *In an action for libel* or slander in respect of words consisting partly of allegations of fact and partly of expression of opinion, *a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved* if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved. (Emphasis added.)

[64] Considering ss 8 and 9 above, we cannot agree that both sections canvas the issue at hand in the present case, which is the issue of half-truth statement. Section 8 merely provides, in essence, that it is unnecessary to prove the truth of every defamatory allegation if the words not proved to be true do not materially injure the plaintiff's reputation. Section 9 provides that the defence of fair comment is still available even if the truth of every allegation is not proved if a fair comment is proved. Here, although we have a specific law on defamation, it is not comprehensive and common law is needed to fill the gaps. The position is acknowledged by this court in the case of *Lim Guan Eng v Ruslan bin Kassim and another appeal* [2021] 2 MLJ 514 where Harmindar Singh FCJ delivering the majority decision said this:

> [108] *There is no express statutory provision governing this issue in the Defamation Act 1957 ('the Act'). The Act itself is quite scanty and it is left to the common law to fill in the gaps.* It was asserted during submissions that this was a matter which was

considered by the Court of Appeal below and eventually decided by applying the earlier Court of Appeal decision in Adnan Yaakob. It was also argued that this issue was considered as well by this court in *Chong Chieng Jen*. Before dealing with these cases, it may be helpful to consider how this question has been dealt with in other common law jurisdictions. (Emphasis added.)

[65] In *Soh Chun Seng v CTOS-EMR Sdn Bhd* [2003] 4 MLJ 180 the court noted as follows:

> *Pursuant to s 3 of the Civil Law Act 1956, the principles of law and their application in Stubbs, Ld are not merely persuasive authority before the courts in Malaysia but represent our law.* This was emphasised by Barakbah CJ in Abdul Rahman Talib v Seenivasagam & Anor at p 72, as follows:
>
> By s 3 of the Civil Law Ordinance 1956, the Common Law of England is applicable in Malaysia except in so far as it has been modified by the Defamation Ordinance 1957.
>
> More recently, in the case of Pang Fes(sic) Yoon, Suriyadi Halim Omar J, reaffirmed the applicability of the English common law to the law of defamation in Malaysia, when he said:
>
> > *By virtue of s 3 of the Civil Law Act 1956, the English common law which is the spring board of the local defamation law, has been statutorily imported keeping abreast with time, the Defamation Act 1957 (Act 286) was promulgated, together with the necessary modification.*
> >
> > *In our present Defamation Act 1957, there is no provision therein governing the principles upon which our courts are to construe the words complained of to determine if the same are capable of a defamatory meaning. In other words, in this area of the law of defamation, English common law principles (as pronounced by the House of Lords in Stubbs, Ld) continue to apply and form part of the law in Malaysia.* (Emphasis added.)

[66] As such, the principles of English common law on the concept of half-truth statement as propounded, inter alia, in the case of *Sutherland and others v Stopes* and *Olive Hospitality Inc v Woo* are applicable in our defamation law pursuant to s 3(1) of the Civil Law Act 1956.

[67] On this issue, this court's decision in *Chong Chieng Jen* was cited in support of the contention that in the presence of a domestic written law or principle of law, the common law in England should not be applied. In that case, the main issue is whether the State Government of Sarawak has the right to sue for defamation on the issue of mismanagement of state funds. The principle of English common law in *Derbyshire County Council v Times Newspapers Ltd and others* [1993] 1 All ER 1011 is that the government body was not entitled to sue for defamation on the ground that any democratically-elected government or government body should be open to uninhibited public criticism. ('The *Derbyshire* Principle'). However, in *Chong*

Chieng Jen's case, it was held that since there is a written law, which is s 3 of the Government Proceedings Act 1956, ('the GPA') that allows the State Government to sue, the *Derbyshire Principle* was not applicable.

[68] Section 3 of the GPA states as follows:

> 3 Right of the Government to sue
>
> Subject to this Act and of any written law where the Government has a claim against any person which would, if such claim had arisen between subject and subject, afford ground for civil proceedings, the claim may be enforced by proceedings taken by or on behalf of the Government for that purpose in accordance with this Act.

[69] It was held in *Chong Chieng Jen*'s case that the right to sue under s 3 of the GPA includes the right to sue for defamation.

[70] *Chong Chieng Jen*'s case is clearly distinguishble. In the present case, at the risk of repetition, we find that the Defamation Act 1957 does not canvas the concept of half-truth statements as discussed earlier, and as such, the English common law principle alluded to above is applicable under s 3(1) of the Civil Law Act 1956.

THE DEFENCES

[71] The appellant raised the defence of justification, qualified privileged and fair comment. The Court of Appeal, having found that the impugned message was defamatory to the respondent, determined whether the impugned message was actuated with malice. We do not see any error by the Court of Appeal in analysing, firstly, whether there exists any malice on the part of the appellant as malice would defeat the defence of qualified privilege and fair comment.

[72] The Supreme Court in *S Pakianathan v Jenni Ibrahim* [1988] 2 MLJ 173, discussed the issue of malice in the following words:

> The protection afforded by the law to a publication made on an occasion of qualified privilege is not an absolute protection but depends on the honesty of purpose of the person who makes the publication. *If he is malicious, that is, if he uses the occasion for some other purpose than that for which the law gives protection, he will not be able to rely on the privilege.* If the publication takes place under circumstances that create a qualified privilege, in order to succeed the plaintiff has to prove express malice on the part of the defendant. Broadly speaking, express malice means malice in the popular sense of or desire to injure the person who is defamed. To destroy the privilege, the desire to injure must be the dominant motive for the defamatory publication. Knowledge that it will have that effect is not enough if the defendant is nevertheless acting in accordance with a sense of duty or in bona fide protection of his own legitimate interests. The mere proof that the words are false is not

A evidence of malice, but *proof that the defendant knew that the statement was false or that he had no genuine belief in its truth when he made it would usually be conclusive evidence of malice. If the defendant publishes untrue defamatory matters recklessly without considering whether it be true or not, he is treated as if he knew it to be false.* In ordinary cases, *what is required on the part of the defamer to entitle him to the* B *protection of the privilege is honest belief in the truth of what he published. But if he was moved by hatred or a desire to injure and used the occasion for that purpose, the publication would be maliciously made even though he believed the defamatory statement to be true. Where the defendant purposely abstained from inquiring into the facts or from availing himself of means of information which lay at hand when the slightest inquiry would have shown the true situation, or where he deliberately stopped* C *short in his inquiries in order not to ascertain the truth, malice may rightly be inferred: Lee v Ritchie* (1904) 6 F (Ct of Sess) 642. (Emphasis added.)

[73] On the same issue, an earlier case of this court in *Rajagopal v* D *Rajan* [1972] 1 MLJ 45 explained as follows:

> The forwarding letter had been drafted by the appellant in consultation with one Manikam (DW4) and translated by the latter into English. The appellant had said that he expected the Minister of Internal Security and the Chief Police Officer to act upon his letter. The learned judge had come to the view that the appellant had E conceived sending the letter following the insulting remark made by the respondent — and obviously intended to refer to him — that 'barbers have come into politics.' There was, he further said, deliberate suppression of the true facts concerning the activities which the respondent had been indulging in, calculated to cause considerable embarrassment to the respondent. '*Malice which avoids qualified* F *privilege is ill-will or spite or any indirect or improper motive in the mind of the defendant at the time of publication and actuating it.*' (*Halsbury*'s, ibid, section 138, page 79). *In my view, there is evidence on the record to warrant the conclusion that the appellant had been actuated by malice and that the defence of qualified privilege was not available to the appellant.*
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> G ...
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> *I may add that on the finding of malice when dealing with the defence of qualified privilege, the defence of fair comment is thereby equally defeated.* (*Thomas v Bradbury, Agnew & Co Ltd* [1906] 2 KB 627 at p 642. As is stated by Viscount Finlay in *Sutherland and others v Stopes* [1925] AC 47 at p 63:
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> > *Such a defence on the ground of fair comment will fail if the jury is satisfied that the libel was malicious.* (Emphasis added.)

[74] In this regard, it is our view that an action of deliberately publishing a I half-truth statement that presents a false impression of a person which affects the person's reputation and further expects the reader of the impugned statement to do a further search on the information is conduct actuated with malice. If the whole truth was revealed, it present a completely different complexion of the published statement when read by readers.

[75] In the present case, the Court of Appeal held that the impugned statement was malicious on the grounds as revealed at paras 30 to 32, of the grounds of judgment which are as follows:

> [30] Here, *the defendant was fully aware that the plaintiff was 'acquitted'* of the charges of financial misconduct and that *these events occurred at least two decades ago. There was no rhyme or reason for the defendant to have 'raked' up the plaintiff's past in connection with the arrest and charge, which ultimately resulted in an acquittal.* The defendant was adamant that she was 'not reckless' when she wrote the impugned text. *We do not think that this was a case of recklessness. Rather, it is a case where the defendant was fully aware that the plaintiff had been acquitted of the charges involving financial misconduct but chose not to disclose this to the participants in the WhatsApp Group.*
>
> [31] *She painted only 'half' the picture. She said that she asked the participants to look it up themselves.* We do not think that such a disclaimer will exonerate the Defendant from liability for defamation as she, being the author of the impugned text, must take responsibility for its contents.
>
> [32] *It is quite apparent that the defendant deliberately chose not to disclose the fact that the plaintiff had been acquitted of the charges of financial misconduct. Therein lies the element of malice on the defendant's part.* It is clear and obvious that the non-disclosure of the plaintiff's acquittal was deliberate and was hardly 'fair' to the plaintiff. (Emphasis added.)

[76] Having considered the evidence in totality and the relevant law, we agree with the reasoning and conclusion made by the Court of Appeal that the text message concerning the respondent was actuated with malice. In the circumstances, the defence of qualified privilege and fair comment the appellant raised is defeated and untenable.

[77] Further, the appellant's defence of justification was also unsustainable as the impugned statement was not substantially true and presented a false impression in the readers' eyes. It is trite that the defence of justification is founded on the truth of the statement or the statement made is substantially true (see *Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Mohd Rafizi bin Ramli* [2022] 3 MLJ 758; [2022] 5 CLJ 487 (FC), *Syarikat Bekalan Air Selangor Sdn Bhd v Tony Pua Kiam Wee* [2015] 6 MLJ 187; [2015] 8 CLJ 477 (FC); *Dato' Seri Mohammad Nizar bin Jamaluddin v Sistem Televisyen Malaysia Bhd & Anor* [2014] MLJU 262; [2014] 5 CLJ 560 (CA)).

[78] In this regard, the statement by Ross J, in the *Olive Hospital Inc* case is instructive where this was said:

> The allegations that I have found to be true are true only because of Mr Woo's conduct in making them so. *This brings into play the principle that proof that statements are literally true will not sufficient justification if the words reasonably convey an overall impression that is false.* (Emphasis added.)

[79] Further, it has been established that the impugned statement had injured the respondent's reputation. As such, the defence under s 8 of the Defamation Act 1957, is inapplicable in the present case.

CONCLUSION

[80] In the upshot, it is our unanimous decision that the appellant's appeal is without merit, and as such the decision of the Court of Appeal in setting aside the High Court decision is affirmed. We also find that there is no necessity to answer the leave questions posed in this appeal. The appellant is to pay costs of RM50,000 to the respondent subject to payment of the allocator.

Order accordingly.

Reported by Nabilah Syahida Abdullah Salleh